

**PUBLIC NOTICE**

**# M2004-04**



**TN DEPT. OF ENVIRONMENT & CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
MINING SECTION  
2700 MIDDLEBROOK PIKE SUITE 220  
KNOXVILLE TN 37921**

**ISSUE DATE 9/09/2004**

**EXPIRATION DATE 10/09/2004**

**TO WHOM IT MAY CONCERN:** The applications described herein have been submitted for Aquatic Resource Alteration Permits pursuant to *The Tennessee Water Quality Control Act of 1977*, T.C.A. §69-3-108.

The purpose of this notice is to advise all concerned of the proposals for which permits are sought and to solicit comments and information necessary to evaluate the probable impact of the activities upon the respective water resources. The decision whether to issue or deny will in part be based upon that evaluation. All factors that may be relevant to the proposals will be considered.

Persons wishing to comment on or object to the issuance of a proposed permit are invited to submit comments in writing to the address listed above. Written statements received in this office on or before the date of expiration of the comment period, **October 09, 2004**, will become part of the record and will be considered in the determination. The public notice number, applicant's name, permit number and coordinator should be referenced.

Interested persons may also request in writing that the director of the Division hold a public hearing on any application. The request must be filed within the comment period and must indicate the interest of the person requesting it, and the reasons that the hearing is warranted. When there is sufficient public interest, the director shall hold a hearing in accordance with Rule 1200-4-1-.05(3)(G).

After consideration of comments submitted during the public comment period, the hearing record if any, and the requirements of federal and state law, the director of the Division will make determinations regarding the final action on each permit. Permit applications, supporting documentation and related comments are available for review and/or copying.

The public notice includes tentative determinations regarding the issuance, modification, denial or termination of permits for the activities proposed herein.

**Permit Application Number:** ARAP-#M2004-04

**Applicant:** Mr. Robert Clear, President  
Robert Clear Coal Corporation  
P. O. Box 352  
LaFollette, TN 37766

**Location:** Dan Branch in Campbell County near Elk Valley, Tennessee at 36°29'20" latitude and 84°16'54" longitude on the Pioneer, Tennessee USGS Quadrangle. The effected reaches are associated with Robert Clear Coal Corporation, Area 9 surface mine, SMCRA Permit #3116, NPDES TN0076376.

**Background Information:** Robert Clear Coal Corporation is proposing to relocate a reach of Dan Branch. The relocation of this reach of stream is to facilitate the construction of a rock toe buttress to stabilize active slides impacting Dan Branch. The slides are the result of cast over mine spoils from mining related activities that predate the *Surface Mining and Reclamation Control Act of 1977*. The movement of this material has been exacerbated by the construction of the Area 9 surface mine haulroad in the area to be stabilized by the rock toe buttress. The Department of Interior Office of Surface Mining is requiring that the applicant stabilize the surface disturbance that has resulted from activities associated with the Area 9 surface mine. The Division has ordered the construction of a temporary sediment control structure to prevent further degradation of Dan Branch due to the transport of sediment from the active slide areas and during construction of the rock toe buttress. The temporary sediment control structure must be removed as soon as the area is stabilized.

The Division's review of the permit applications determined that the scope of the project was such that the proposed activities are not covered under a general permit.

**Project Description ARAP-#M2004-04:** Robert Clear Coal Corporation has applied for an Individual Aquatic Resource Alteration Permit for the alteration and restoration type activities in approximately 1369 linear feet of Dan Branch.

- The permit application indicates approximately 859 linear feet of stream is to be relocated up to 100 feet west of the existing stream channel. The reconstructed stream channel is to emulate a high gradient step-pool stream with a projected slope of 20 percent. "Drop structures" are to be incorporated into the relocated stream channel at each change in elevation and no further apart than fifty feet to reproduce the step-pool habitat. The reconstructed stream reach is to have a 12-foot wide base flow channel nested within a 30-foot wide flood channel.
- Approximately 510 feet of stream will be restored and enhanced. This activity includes the reach affected by the sediment control structure and the removal of an existing culvert that encapsulates approximately 30 feet of Dan Branch.

- An additional 2200 feet of wet weather conveyance/ephemeral drainages to Dan Branch are to be stabilized with a rock lining and enhanced with riparian plantings post-mining. The ARAP stream channels will be reconstructed on the reclaimed contours with minimal surface and riparian disturbance on the right descending bank. Reconstruction and enhancements to stream reaches will follow a generalized template. Variations from the generalized template may occur due to specific site conditions and material availability.
- On completion of channel construction and achievement of final grade the area will be revegetated with an appropriate seed mix. Riparian zones will be established for the reconstructed stream channels by planting four rows of native tree and shrub species on 10 X 10 foot centers at a rate of approximately 400 trees per acre.

**Tentative Determination:** The Division proposes to issue a conditional permit.

**Permit Coordinator:** Dave Turner  
Mining Section  
Division of Water Pollution Control  
2700 Middlebrook Pike  
Suite 220  
Knoxville, TN 37921

#### Aquatic Resource Alteration Permit Conditions

1. The work shall be accomplished in conformance with the approved plans, specifications, data and other information submitted in support of the above application and the limitations, requirements and conditions set forth herein.
2. The proposed work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life, livestock watering and wildlife, recreation and irrigation.
3. This permit does not authorize degradation of Dan Branch and alterations to the stream are limited to the activities specified in the approved plans and permit. Activities that result in the alteration to "waters of the state" other than the reaches specified in the approved plans and permit require prior authorization under a separate aquatic resource alteration permit.

4. A copy of the permit and approved plans must be kept on site during all construction phases of the activity covered.
5. Drainage and erosion controls must be in place prior to commencing construction activities and maintained for the duration of the project.

6. **Phase I Action:** Stream Channel Relocation and Restoration

- **Construction Sequence**  
Robert Clear Coal Corporation must implement the sequence of construction activities in accordance with the ARAP plans provided to and approved by the Division.
- **Notification**  
Robert Clear Coal Corporation must notify the Division when the rock toe buttress is complete to the elevation of the relocated stream channel.
- **Compaction Testing**  
Each one hundred foot section of stream channel reconstruction must be tested for hydraulic integrity. Tests must be conducted at random locations within test reach. The test must conclusively indicate not to leak at a rate that would dry the downstream reach. The Division must be notified at least 72 hours prior to testing so that Division personnel can be present to observe the testing procedures.
- **Channel Morphology**  
A detailed channel morphology profile of each reconstructed stream reach must be provided to the Division three years into Level II monitoring and at the conclusion of Level II monitoring.
- **Riparian Planting**  
Riparian buffer zones on either side of the stream channel must be established as detailed in the plans. Tree and shrub plantings must occur within first planting season after construction of the stream channel. Buffer zone areas without established vegetation must be planted with endemic shrub and tree species. The applicant proposes to plant tree and shrub species at the minimum rate of four hundred stems per acre. At least five endemic species must be planted and no species should compromise more than one-third of the total planted trees in the riparian buffer zones. A planting survivorship of 300 stems per acre must be attained during the five-year monitoring period.

Undisturbed areas within the riparian buffer zones may not require additional planting. This is subject to Division approval and Robert Clear Coal Corporation must demonstrate that tree and shrub species are established in these zones.

**7. Phase II Mitigation Actions**

- Headwater wet weather conveyance reaches  
The mitigation ratio for the enhanced reaches of ephemeral stream channel is 2.5:1.
  - Removal of culvert section  
The mitigation ratio for the restored reaches of stream channel is 1:1.
  - Diversion of upslope drainage from the slide area located on the right descending bank downstream of the road crossing and DNB Sediment Trap. This is a pre-law slide that is not associated with Robert Clear Area 9 activities.
  - Removal of DNB Sediment Trap  
The mitigation ratio for the restored reaches of Dan Branch is 1:1.
  - Relocation of the Dan Branch stream channel  
The mitigation ratio for the relocated stream channel is 1:1.
8. A written agreement must be obtained from the landowners that precludes surface disturbance such as mining, harvesting of timber in the fifty-foot buffer zones for a minimum of twenty-five years with selective harvesting only in these zones thereafter. This will assist in assuring the long-term stability of the reconstructed stream reaches.
9. Level II monitoring requirements must be implemented for ARAP-#M2004-04. The following items have to be completed and submitted to the Division:
- Narrative description and photos of pre-project conditions
  - Pre-project habitat assessment
  - Annual narrative description and photos
  - Annual riparian vegetation survey
  - Post-project habitat assessment at the end of the required monitoring period
10. Robert Clear Coal Corporation must also conduct an annual biological evaluation using the *State of Tennessee SOP for Macroinvertebrate Stream Surveys, March 2002, Revised November 2003*, in Dan Branch and at the conclusion of Level II monitoring for the ARAP areas.
11. A comprehensive post-project report must be submitted to the Division at the conclusion of the five-year monitoring period. This report must demonstrate that the ARAP channel, aquatic habitat areas, and riparian buffer zones have met permit conditions.
12. On successful completion of the ARAP the Division will issue a letter of finding that the conditions of the permit have been fulfilled indicating that no further action is required.

**State of Tennessee**  
**Antidegradation Policy**

Tennessee's Antidegradation Statement is found in Chapter 1200-4-3-.06 of the *Rules of the Tennessee Department of Environment and Conservation*. The primary purpose of the antidegradation policy is to establish a greater level of protection for those waters that are identified to be of high quality. Some high-quality waters are in near-pristine condition. Others are determined to be high quality due to specialized uses and/or unique features.

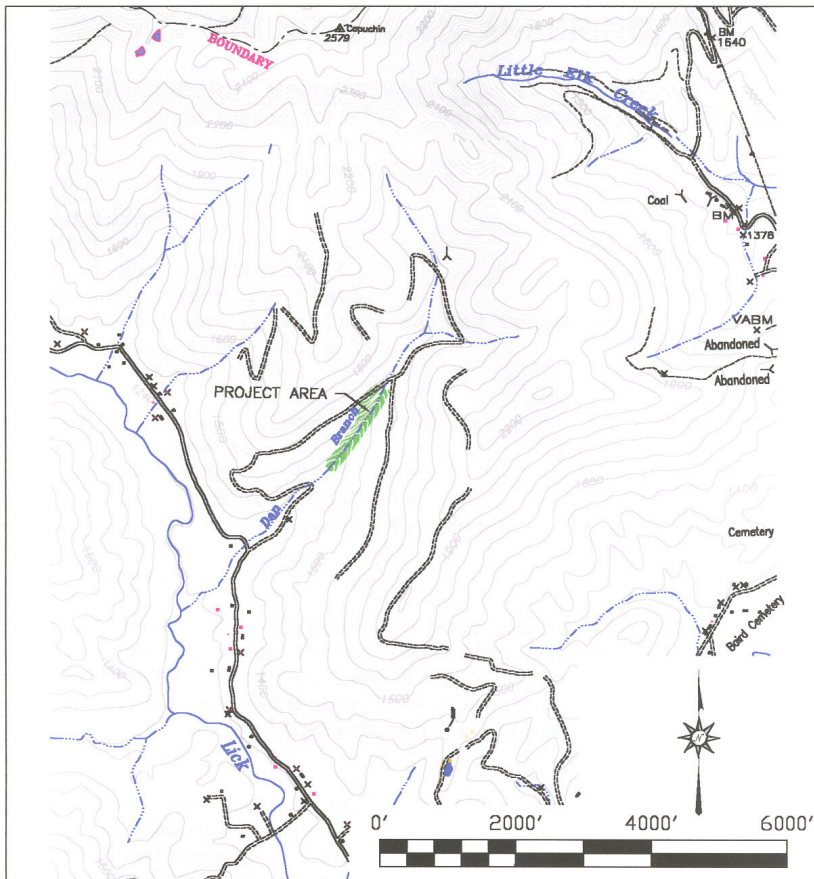
Generally, there are two types of high-quality waters. Outstanding National Resource Waters (ONRWs), or Tier 3 waters, are specifically designated by the Water Quality Control Board and are afforded the greatest level of protection. No new discharges or expansion of existing discharges are allowed to result in degradation of the existing water quality.

Other high-quality waters are identified by the Department as Tier 2 waters and are also protected against degradation. Some degradation may be allowed only if the Water Quality Control Board deems it economically and socially necessary. Other surface waters not specifically identified and/or designated as high quality are referred to as Tier 1 waters. Tennessee's Water Quality Standards must be achieved and/or maintained in these waters.

This permit does not obviate requirements of other federal, state or local laws.

The State of Tennessee reserves the right to modify or revoke this permit or to seek modification or revocation should the State determine that the activity results in more than an insignificant violation of applicable water quality criteria or violation of the Act. Failure to comply with permit terms may result in penalty in accordance with § 69-3-115 of the Act.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within thirty days after receipt of the permit action. In such petition, each contention should be stated in numbered paragraphs, which describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" by 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with T.C.A. §69-3-110 and 4-5-301 et. seq. Questions concerning this certification should be addressed to Dave Turner at 865-594-5541 or Dan Murray at 865-594-5549.



TITLE: Location Map  
AREA #: Area #9 ARAP  
SURFACE & MINERAL RIGHTS: Ketchen Land  
Company, Inc., Vanguard Investment  
Properties, Inc., & John & Esther Baird  
COUNTY: Campbell  
Quadrangle: Pioneer 4156 IV NE  
LATITUDE: 36° 29' 20"  
LONGITUDE: 84° 16' 54"  
DATE: 08/16/2004

LEGEND:

Project Area       

SCALE: 1" = 2000'

Prepared by:  
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Prepared for:  
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2980 General Carl Stiner Highway  
LaFollette, TN 37766  
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**Permit Application M2004-04**  
National Coal Corporation  
Site Location Map